

REMARKS

Applicants wish to thank Examiner Borin for the courtesy extended to Raymond Smith in discussing the Office Communication by telephone. While Applicants have elected not to pursue the subject matter discussed during the telephonic interview, Applicants reserve the right to pursue such subject matter at a later date, either in the present application in a continuing application to be filed at a later date.

The following remarks are in response to the Office Communication dated August 12, 2008. The Examiner indicated in the Office Communication that Claims 2, 5, 14, 15 and 17 were pending. The limitation of Claim 17 is incorporated into Claim 2 and Claim 17 is canceled. Thus, Claims 2, 5, 14 and 15 are presently pending. No new matter has been added herewith. The following addresses the substance of the Office Action.

Elected Invention

The presently pending claims no longer require a method step not required in the claims originally elected. Additionally, the subject matter presently being claimed has clear support in the specification as filed in Original Claim 17. Accordingly, examination on the merits of the presently pending claims is respectfully requested.

Definiteness

Claim 15 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the claim was said to lack antecedent basis because the base Claim 1 did not address “inflammatory disease.” Claim 15 was previously amended in the response submitted on May 16, 2008 to be dependent on Claim 14, which provides antecedent basis for an inflammatory disease or condition. Support for the amendment is found in the Specification as filed at page 4, paragraph [0016]. Accordingly, the Applicants respectfully request removal of the rejection.

Enablement

Claims 1-5, 14 and 15 were rejected under 35 U.S.C. § 112, first paragraph, because the Examiner alleged that the specification is only enabling for particular liver X receptor (LXR) agonists. Applicants have amended Claim 2 to incorporate the limitation of Claim 17 (i.e., wherein the LXR agonist is GW3965 or T0901317. In view of this amendment, the Applicants respectfully request withdrawal of the rejection.

Novelty

Claims 1-5 and 14 and 15 were rejected under 35 U.S.C. § 102(e) as anticipated by any of Elias et al. (U.S. Patent No. 6,184,215), Song et al. (U.S. Patent No. 7,078,396), and Martin et al. (U.S. Patent No. 7,115,640). The cited references teach the use of agonists of liver X receptors for treating inflammation, including atherosclerosis.

To be anticipatory under 35 U.S.C. § 102, a reference must teach each and every element of the claimed invention. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed.Cir. 1986). “[A]nticipation requires that all of the elements and limitations of the claim are found within a single prior art reference.” See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). However, none of the cited references disclose the use of GW3965 and T0901317. Accordingly, the Applicants respectfully request removal of the rejection.

Nonobviousness

Claims 1-5 and 14 were rejected under 35 U.S.C. § 103(a) as obvious over Ohlsson et al. 1996 *Clin Invest* 98:78-89, as evidenced by Elias et al. (U.S. Patent No. 6,184,315). Ohlsson et al. teaches that oxysterols inhibit binding of transcription factor AP-1 to DNA in macrophages, and thus reduces inflammatory response of macrophages. As indicated above, the claims have been amended to refer to the specific LXR agonists, GW3965 or T0901317, as formerly recited in Claim 17. There is no suggestion in the cited prior art that these specific agonists would have any effect in the claimed method steps. The Examiner appears to have recognized this deficiency in not including former Claim 17 in this rejection. As such, withdrawal of the rejection as it applies to the presently pending claims is respectfully requested.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history

shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

In view of Applicants' amendments to the Claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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